



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

COURT FILE NO.: CV-25-00748799-00CL

DATE: November 17, 2025

NO. ON LIST: 2

TITLE OF PROCEEDING: LONDON VALLEY IV INC., BY ITS COURT-APPOINTED  
RECEIVER AND MANAGER, KSV RESTRUCTURING INC. v. PILEHVER et al

BEFORE: JUSTICE J. DIETRICH

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

| Name of Person Appearing             | Name of Party             | Contact Info                                                                                                                                           |
|--------------------------------------|---------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------|
| Mark van Zandvoort<br>Calvin Horsten | Counsel for the Plaintiff | <a href="mailto:mvanzandvoort@airdberlis.com">mvanzandvoort@airdberlis.com</a><br><a href="mailto:chorsten@airdberlis.com">chorsten@airdberlis.com</a> |

**For Defendant, Respondent, Responding Party:**

| Name of Person Appearing | Name of Party | Contact Info |
|--------------------------|---------------|--------------|
|--------------------------|---------------|--------------|

**For Other, Self-Represented:**

| Name of Person Appearing       | Name of Party | Contact Info                                                                                                                                   |
|--------------------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------|
| Jordan Wong<br>David Sieradzki | Receiver      | <a href="mailto:jwong@ksvadvisory.com">jwong@ksvadvisory.com</a><br><a href="mailto:dsieradzki@ksvadvisory.com">dsieradzki@ksvadvisory.com</a> |

## **ENDORSEMENT OF JUSTICE J. DIETRICH:**

### **Introduction**

- [1] London Valley IV Inc. (“**LV IV**”) by KSV Restructuring Inc. (“**KSV**”) solely in its capacity as the Court-appointed receiver of LV IV, (the “**Receiver**”) seeks an order for default judgment against the Defendants, Behzad Pilehver, Mahtab Nali and 2621598 Ontario Inc. doing business as Nali and Associates (“**Nali and Associates**”).
- [2] None of the Defendants appeared today. As such, the matter proceeded on an unopposed basis.
- [3] Defined terms used but not otherwise defined herein have the meaning provided to them in the factum of the Receiver filed for use on this motion.

### **Background**

- [4] On August 7, 2025, I granted a Mareva injunction and Norwich Order (the “**August 7 Order**”) against the Defendants as requested by the Receiver. Much of the background to this matter is set out in my accompanying endorsement of August 7, 2025. For ease of reference, I have repeated relevant background information here.

### **The Receivership Proceedings and the Parties**

- [5] On March 6, 2025, under Court File No. CV-25-00736577-00CL (the “**Receivership Proceedings**”), KSV was appointed as Receiver of the assets, undertakings and properties of, among others, LV IV, and the proceeds thereof, including with respect to the LV IV Property (as defined below) (the “**Appointment Order**”).
- [6] The Receivership Proceedings were commenced by Mizue Fukiage, Akiko Kobayashi, Yoshiki Fukiage, Kobayashi Kyohodo Co., Ltd. and Toru Fukiage (collectively, the “**Kobayashi Group**”).
- [7] The Kobayashi Group, other members of their family and numerous other investors (collectively, the “**Co-Owners**”) invested funds in certain land banking projects to finance the acquisition of real estate (the “**Land Banking Enterprise**”). Various companies (some of which are defined in the Appointment Order as the “**Nominee Respondents**”), including LV IV, were formed to hold title to various pieces of real estate in Ontario as nominees and bare trustees for the Co-Owners.
- [8] As part of the Receiver’s powers under the Appointment Order, it was authorized to trace and follow the proceeds of any real property previously owned by any of the Nominee Respondents that was sold, transferred, assigned or conveyed on or after October 31, 2024, including in respect of the LV IV Property.
- [9] LV IV is an Ontario corporation, and owned the property municipally known as 6211 Colonel Talbot Road, London, Ontario (the “**LV IV Property**”) until the property was sold and transferred to a third-party purchaser for consideration of \$2 million on February 5, 2025.

- [10] At the time of the Receiver's appointment, Mr. Pilehver was and remains a director and officer of certain Nominee Respondents in the Land Banking Enterprise, including LV IV of which he is the sole director and President.
- [11] Ms. Nali is believed to be Mr. Pilehver's wife, although this has not been confirmed by the Receiver.
- [12] Nali and Associates is a business name registered by 2621598 Ontario Inc. (an Ontario Corporation). Ms. Nali is the President and sole director of Nali and Associates. In corporate filings, both Ms. Nali and Mr. Pilehver list their address for service as 48 Chelford Road, North York, Ontario.

#### The LV IV Property

- [13] The Kobayashi Group invested the aggregate amount of \$3.7 million to acquire an approximately 72% undivided beneficial interest in the LV IV Property. This interest was acquired pursuant to four sale agreements among the applicable member of the Kobayashi Group, as purchaser, LV IV, as nominee, and TSI-LV IV International Canada Inc., as vendor. Each of these sale agreements includes certain co-owner agreements, which require that, amongst other things, net income from the property be paid to Co-Owners and that Co-Owners holding at least 51% of the interests in the property approve any sale.
- [14] On October 31, 2024, the Honourable Justice MacNeil issued an Order (the "**October 31, 2024 Injunction Order**") in the proceedings under Court File No. CV-24-00087580-0000 (the "**Hamilton Proceedings**") which at paragraph 5 of the Order provided that all persons with notice of the order were restrained from selling, removing, dissipating alienating, transferring, assigning, encumbering, or similarly dealing with their assets, or the assets of certain companies. The Receiver's reading of this Order is that the companies referenced included LV IV and therefore the restriction applied to the LV IV Property. Although the defined terms in the October 31, 2024 Injunction Order are not straightforward, it appears on the evidence that all parties understood that the LV IV Property was subject to the Order and that formed part of the basis set out in the Receivership Proceedings.
- [15] Mr. Pilehver was aware of the October 31, 2024 Injunction Order as he attached it to an affidavit he swore in the Hamilton Proceedings on January 20, 2025 (prior to the transfer of the LVI IV Property on February 5, 2025).
- [16] The sale of the LV IV Property on February 5, 2025 was completed without the Kobayashi Group's knowledge or consent. Further, the Kobayashi Group have not received any net income or other proceeds in connection with the LV IV Property.

#### Sale of LV IV Property and Alleged Misappropriation of Funds

- [17] The LV IV Property was sold without compliance with the co-owners agreement. Accepting the Receiver's interpretation of the October 31, 2024 Injunction Order, the LV IV Property was also sold in contravention of that Order and in the face of the pending Receivership Proceeding of which Mr. Pilehver was aware.

- [18] Based on the terms of the Appointment Order the Receiver was provided with information that on February 5, 2025, the proceeds from the sale of the LV IV Property were deposited into the trust account (the “**Hundal Account**”) for the lawyer, Parminder Hundal (“**Hundal**”), who acted for LV IV on the sale transaction were subsequently disbursed by Hundal, at Mr. Pilehver’s direction, to the following persons and entities who appear to have no connection to LV IV or the LV IV Property:
- (a) on February 7, 2025, a payment was made from the Hundal Account to Ms. Nali in the amount of \$817,859.49, which payment was made by cheque and deposited into a bank account in Ms. Nali's name;
  - (b) on February 18, 2025, a further \$80,800 was paid by cheque from the Hundal Account to Nali and Associates;
  - (c) on February 12, 2025, \$5,000 was wired by Hundal to Bally Hundal/Hundal Law Firm;
  - (d) on February 14, 2025, \$30,000 was wired by Hundal to “Unik Credit mgmt in trust” which again appears to have no connection to LV IV or the LV IV Property;
  - (e) payments totalling \$103,040.42 were paid to Hundal’s law firm on February 10, 12, 20 and March 5, 2025 in purported satisfaction of accounts rendered, of which at least \$94,000 appears to have no connection to LV IV or the LV IV Property; and
  - (f) on March 5, 2025, one day prior to the Appointment Order, \$34,000 was wired by Hundal to a third law firm, Blaney McMurtry LLP. On March 21, 2025, Blaney McMurtry LLP (“**Blaney**”) advised the service list in the Receivership Proceedings that it had been retained by Mr. Pilehver in his personal capacity, as well as certain entities related to Mr. Pilehver.
- [19] In my August 7 Endorsement, I found that by orchestrating a sale of the LV IV Property without proper authorization and then improperly transferring the proceeds to benefit the Defendants, the Receiver had established: (i) a strong *prima facie* case that Mr. Pilehver had breached his fiduciary duty to LV IV; and (ii) the mere fact that Ms. Nali and Nali and Associates obtained the sale proceeds belonging to LV IV without permission, and without any legal entitlement, amounts to a strong *prima facie* case of conversion.

Events since the August 7 Order

- [20] This action was originally commenced by the Receiver, on behalf of LV IV, by issuance of a Notice of Action on August 5, 2025 (the “**Notice of Action**”). After the August 7 Order relief was obtained, a Statement of Claim was filed with the Court on September 3, 2025 (the “**Statement of Claim**”).
- [21] Ms. Nali and Nali and Associates were served with the Statement of Claim and Notice of Action on September 9, 2025 by personal service. Both of these Defendants failed to serve a Statement of Defence, failed to comply with the August 7 Order (including as later extended) by not delivering sworn statements of assets, and have failed to attend any of the case conferences scheduled in this proceeding or otherwise participate in these proceedings. As a result, Ms. Nali and Nali and Associates were each noted in default on October 2, 2025.
- [22] Mr. Pilehver was served with the Statement of Claim and Notice of Action on September 3, 2025 by service on Pilehver’s counsel of record at that time, Henein Hutchison Robitaille LLP (“**HHR**”).

- [23] On September 23, 2025, Mr. Pilehver, HHR and the Receiver and its counsel attended a case conference in this matter before me. At this case conference, HHR advised that it would be seeking to withdraw as lawyers of record. Mr. Pilehver attend this case conference and advised that he was in the process of retaining new counsel and hoped to have that completed the following week, being the week ending October 3, 2025. Prior to that case conference, Mr. Pilehver had delivered an incomplete sworn statement on September 16, 2025 in partial compliance with the August 7 Order, but failed to attend for examination given his request to delay the examination pending his change of counsel, which change never materialized.
- [24] On October 14, 2025, Mr. Pilehver, HHR and the Receiver and its counsel attended a further case conference before me. Mr. Pilehver had not yet retained new counsel. Mr. Pilehver again advised the Court that he was in the process of retaining new counsel and that he expected to file a Statement of Defence by the end of October 2025. At that case conference a motion by HHR for removal from the record was scheduled for November 3, 2025 as well this motion for default judgment was scheduled.
- [25] On November 3, 2025, HHR obtained an removing itself as lawyers of record for Mr. Pilehver. Mr. Pilehver did not attend that hearing. Mr. Pilehver was noted in default on November 3, 2025.
- [26] The Receiver served its motion materials for today's motion on November 5, 2025 by: (i) emailing them to Mr. Pilehver; (ii) sending them by same-day courier to Mr. Pilehver at his two last known addresses; and (iii) sending them by same day courier to Ms. Nali and Nali and Associates at their last two know addresses.
- [27] No response has been received and as noted above, none of the Defendants appeared today.

Blaney McMurtry LLP

- [28] As noted above approximately \$34,000 was transferred by Hundal, at Mr. Pilehver's direction, to Blaney. On November 14, 2025, the Receiver's counsel exchanged emails with Tim Dunn, a partner at Blaney advising that the draft order sought today would require Blaney to transfer that amount to the Receiver in partial satisfaction of the Judgment. Blaney did not appear today or oppose the order sought.

**Issues**

- [29] The issues to be determined are
- (a) whether LV IV is entitled default judgment against the Defendants;
  - (b) whether the August 7 Order should remain in effect as a Mareva in aide of execution until the Defendants have fully satisfied the judgment; and
  - (c) whether a declaration should be issued that the judgment against the Defendants, is a debt or liability that survives any past, present or future assignment in bankruptcy pursuant to s. 178(1)(d) or (e) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c B-3 (the "BIA")?

## Analysis

- [30] Pursuant to Rule 19.02 of the *Rules of Civil Procedure* R.R.O. 1990, Reg 194 (the "**Rules**"), having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the Statement of Claim. However, pursuant to Rule 19.06 a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.
- [31] Rule 19.05 provides that a motion for judgment which involves unliquidated damages shall be supported by evidence given by affidavit. In this case, the Receiver has filed an affidavit of Jordan Wong sworn November 5, 2025 in support of the motion for default judgement.
- [32] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?
- [33] With respect to the claim of civil fraud against Mr. Pilehver, LV IV must satisfy the following test: (a) a false representation of fact by the defendant to the plaintiff; (b) knowledge that the representation was false, absence of belief in its truth, or recklessness as to its truth; an intention the plaintiff act in reliance on the representation; (d) the plaintiff acted on the representation; and (e) the plaintiff suffered a loss in doing so: see *Paulus v. Fleury*, 2018 ONCA 1072 at paras 8-9. For this purpose, the knowledge of Mr. Pilehver, as the directing mind of LV IV, is not imputed to LV IV see *Aquino v. Bondfield Construction Co.*, 2024 SCC 31 at para 81.
- [34] I am satisfied that LV IV has established liability of Mr. Pilehver for civil fraud based upon the following deemed admissions in the Statement of Claim as Mr. Pilehver:
- (a) falsely and knowingly represented to LV IV that the Co-Owners of LV IV had consented to the sale of the LV IV Property and/or that the Plaintiff was entitled to sell the LV IV Property and to distribute the proceeds as directed by Mr. Pilehver;
  - (b) in reliance on Mr. Pilehver's representations, LV IV followed his direction in causing prohibited payments of the sale proceeds to be made by LV IV: (i) to related, non-arm's length parties, for which no goods or services, or no good or service or any material value, was provided to LV IV; and (ii) to other entities for the improper benefits for himself and the other Defendants; and
  - (c) knowingly received, retained and used these funds which rightfully belonged to LV IV, and as a direct result of which LV IV suffered a loss.

- [35] With respect to the claim of breach of fiduciary duty of Mr. Pilehver, LV IV must establish both proof of the duty and breach of the duty: see *Hodgkinson v Simms*, [1994] 3 SCR 377. I am satisfied that LV IV has established liability of Mr. Pilehver for breach of fiduciary duty based upon the following deemed admissions in the Statement of Claim as Mr. Pilehver:
- (a) owed a fiduciary duty to LV IV as the sole director of LV IV; and
  - (b) by engaging in the improper transfer of funds – misappropriating company funds to benefit the Defendants – Mr. Pilehver breached that fiduciary duty.
- [36] With respect to the claim for knowing assistance as against Ms. Nali and Nali and Associates, as set out in *DBDC Spadina Ltd. v. Walton*, 2018 ONCA 60 at para 80, "A stranger to a trust or fiduciary obligation may also be liable in equity on the basis of "knowing assistance" where the stranger, with actual knowledge, participates in or assists a defaulting trustee or fiduciary in a fraudulent and dishonest scheme". I am satisfied that LV VI has established knowing assistance of Ms. Nali and Nali & Associates based on the deemed admissions in the Statement of Claim that Ms. Nali had actual knowledge that Ms. Pilehver controlled LV IV and, as such, was in a fiduciary relationship to LV IV, and that he breached that relationship, including by directing that certain of the LV IV Property sale proceeds be paid to Ms. Nali and Nali and Associates.
- [37] Furthermore, the Defendants are deemed to have admitted that they participated in, authorized and/or acquiesced to the transfer or misappropriation of the sale proceeds and knew that such conduct was in breach of LV IV's obligations, which amounts to knowing assistance.
- [38] With respect to the claim of conversion against Mr. Pilehver, Ms. Nali and Nali and Associates, LV IV must establish a wrongful interference with the goods of another, such as taking, using or destroying the goods in a manner inconsistent with the owner's right to possession - the tort is one of strict liability, and accordingly, it is no defence that the wrongful act was committed in all innocence: see *Boma Manufacturing Ltd. v Canadian Imperial Bank of Commerce*, [1996] 3 SCR 727 at paras 31-32. I am satisfied that LV IV has established liability of each of the defendant for the tort of conversion based upon the deemed admissions in the Statement of Claim that each of the Defendants obtained funds belonging to LV IV (and, by virtue, its Co-Owners) without permission, and without any legal entitlement.
- [39] LV IV also seeks a declaration that it is entitled to a constructive trust and equitable lien over the misappropriated funds, and an order for equitable tracing. As set out in *Soulos v Korkontzilas*, [1997] 2 SCR 217 at 43, constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, as well as to remedy unjust enrichment and corresponding deprivation. Given the finding of fraud and breach of fiduciary duty on the part of Mr. Pilehver and the deemed admissions in the Statement of Claim which support a finding of unjust enrichment as against all of the Defendants including Ms. Nali and Nali and Associates, I am satisfied that an order finding a constructive trust is appropriate in the circumstances. Further, the circumstances also support an equitable lien see: *Caroti v. Vuletic*, 2024 ONSC 6776 at para 107.
- [40] As for damages, along with repayment of the funds, LV IV seeks punitive damages in the amount of \$250,000. A court may award punitive damages on a motion for a default judgment: see *Bank of Montreal v. 1886758 Ontario Inc.*, 2022 ONSC 4642 [**BMO v 188**] at para 34.

- [41] In *Whiten v. Pilot Insurance Co.*, 2002 SCC 18. the Supreme Court of Canada held that the purposes of punitive damages were retribution, denunciation, and deterrence. As set out in *BMO v 188* at para 36, an assessment of punitive damages requires an appreciation of: (a) the degree of misconduct; (b) the amount of harm caused; (c) the availability of other remedies; (d) the quantification of compensatory damages; and (e) the adequacy of compensatory damages to achieve the objectives or retribution, deterrence, and denunciation. These factors ensure that punitive damages are rational and to ensure that the amount of punitive damages is not greater than necessary to accomplish their purposes.
- [42] In the circumstances of this case, I am satisfied that the purposes of retribution, denunciation, and deterrence would be well served by an award of punitive damages. The facts that are deemed to be admitted show that this was an organized fraud and the Defendants took advantage of funds which were held in trust for investors. The evidence from Mr. Wong is that those investors were overseas and many of which do not speak English. I, therefore, award \$150,000 in punitive damages.
- [43] LV IV seeks the continuation of the Mareva relief previously granted in this matter on an enduring basis until the judgment sought has been fully satisfied. As set out in *Coast to Coast Against Cancer v. Sokolowski*, 2016 ONSC 170 [Coast to Coast] at para 6 the test for a “Mareva in aid of execution” is the same as the ordinary test for a Mareva injunction. I am satisfied that there have been no substantive changes in the evidence before me that would warrant a modification of the existing Mareva since I originally granted a Mareva injunction in my August 7 Order.
- [44] LV IV also seeks declaratory relief under s. 178(1)(d) and (e) of the BIA, LV IV that the Defendants’ debt and liability results from obtaining property by false pretences or by fraud and therefore survives any past, present or future assignment in bankruptcy. I decline to make such declarations. In this respect, I agree with and adopt the reasoning of the court in *Royal Bank of Canada v. Elsioufi*, 2016 ONSC 5257, at para. 7, wherein Dunphy J. declined to make an advance declaration under s. 178(1)(e) on the basis that the court lacked “jurisdiction to make such a hypothetical declaration before the issue actually arises”. My decision in this regard is without prejudice the LV IV seeking similar relief should a bankruptcy occur.

### **Disposition**

- [45] For the reasons set out above, I am satisfied that LV IV is entitled default judgment against the Defendants as sought including the amount of \$150,000 as punitive damages. As well, I am satisfied that the August 7 Order should remain in effect as a Mareva in aid of execution until the Defendants have fully satisfied the judgment. However, I decline to grant the requested declarations that the judgment against the Defendants, is a debt or liability that survives any past, present or future assignment in bankruptcy pursuant to s. 178(1)(d) or (e) of the BIA, as such request is hypothetical at this time.
- [46] As to costs, LV IV seeks an award of costs on a full indemnity basis, or in the alternative, a substantial indemnity basis. Courts have consistently held that fraud amounts to reprehensible conduct which merits an award of substantial indemnity costs and only in very narrow circumstances full indemnity costs: see *Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766 at para 8. I am satisfied that in this circumstances an award of costs on a substantial indemnity scale is appropriate. I have reviewed the rates and time charged which I find fair and reasonable. I also find that such costs were within the reasonable contemplation of the Defendants. Accordingly, I order costs payable to LV IV in the amount of \$296,197.30.

[47] Order to go in the form signed by me this day.

A handwritten signature in blue ink, consisting of a stylized, cursive 'J' followed by a horizontal line.

Date: November 17, 2025

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Jane O. Dietrich